

## § 391.47

## 12 CFR Ch. III (1–1–15 Edition)

or director serving at the request of the FDIC, the former Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management conservatorship program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the FDIC or any predecessor agency (or its delegate) in connection with a notice or other filing under this subpart that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such notice or other filing;

(vi) Acquisition and retention at the time of submission of a notice, of stock in the State savings association by the acquiror in violation of § 391.42 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the FDIC, create excessive risks of default and pressure on the State savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

### § 391.47 [Reserved]

### § 391.48 Rebuttal of control agreement.

#### Agreement

#### Rebuttal of Rebuttable Determination Of Control Under Subpart A

##### I. WHEREAS

A. [ ] is the owner of [ ] shares (the “Shares”) of the [ ] stock (the “Stock”) of [name and address of State savings association], which Shares represent [ ] percent of a class of “voting stock” of [ ] as defined under the Acquisition of Control Regulations

(“Regulations”) of the FDIC, Subpart A of Part 391 (“Voting Stock”);

B. [ ] is a “State savings association” within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] (“Additional Shares”), such that [ ]’s ownership thereof will represent 10 percent or more of a class of Voting Stock but will not represent 25 percent or more of any class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not 25 percent or more of any class of Voting Stock of a State savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the “Rebuttal”);

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The FDIC has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the FDIC to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the FDIC that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and shall have obtained clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of